

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN GARRETT SMITH,
Plaintiff,

v.

SANDRA ALDRIDGE, *et al.*,
Defendant

CASE NO. 3:19-cv-05600-RBL-JRC

ORDER ON PLAINTIFF'S
MOTION TO RECUSE

This matter under 42 U.S.C. § 1983 has been referred to the undersigned as authorized by 28 U.S.C. § 636(b). *See* Dkt. 64. The matter is before the Court on plaintiff's "MOTION for JRC to be Immediately Removed for the Bench," which the Court interprets as a motion for recusal. *See* Dkt. 74. For the reasons stated herein, the undersigned declines to recuse himself and directs this motion to be set on the Chief Judge's calendar for consideration.

BACKGROUND

This matter was referred to the undersigned on May 4, 2020, after the previously assigned magistrate judge recused himself based on a potential conflict of interest. *See* Dkt. 64. By that

1 time, the Court had entered a pretrial scheduling order setting discovery and dispositive
2 deadlines and certain defendants had filed a summary judgment motion that is currently ripe for
3 decision. *See* Dkt. 43. Plaintiff has also filed a number of pending motions. *See* Dkts. 55, 56,
4 65, 66, 72. The Court has yet to rule on any motion or issue a report and recommendation in this
5 matter.

6 Plaintiff appears to seek recusal primarily because the undersigned issued a report and
7 recommendation that plaintiff did not like. *See* Dkt. 74, at 2. Plaintiff also states that he has
8 filed a lawsuit against the undersigned in state court—apparently, a lawsuit in which he has also
9 named a number of other federal judges in this District as defendants. *See* Dkt. 74, at 2.

10 **DISCUSSION**

11 The Court’s local rules provide for the following procedure when a motion to recuse is
12 filed:

13 Whenever a motion to recuse directed at a judge of this court is filed pursuant to 28
14 U.S.C. § 144 or 28 U.S.C. § 455, the challenged judge will review the motion
15 papers and decide whether to recuse voluntarily. If the challenged judge decides
16 not to voluntarily recuse, he or she will direct the clerk to refer the motion to the
chief judge, or the chief judge’s designee. If the motion is directed at the chief
judge, or if the chief judge or the chief judge’s designee is unavailable, the clerk
shall refer it to the active judge with the highest seniority.

17 Local Civil Rule 3(f).

18 The undersigned has reviewed the applicable judicial policies and rules and declines to
19 voluntary recuse himself for the reasons discussed herein.

20 A judge shall recuse himself or herself if “a reasonable person with knowledge of all the
21 facts would conclude that the judge’s impartiality might reasonably be questioned”—a test that
22 requires recusal if there is the appearance of bias. *Yagman v. Republic Ins.*, 987 F.2d 622, 626
23 (9th Cir. 1993); 28 U.S.C. § 455. Disqualification is warranted if “a reasonable person with
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knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008). A judge's alleged bias, prejudice, or partiality must be based on knowledge derived from a source outside of any judicial proceedings—some factor other than what the judge learned from his or her participation in the case. *Liteky v. United States*, 510 U.S. 540, 554 (1994). Prior judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. *Liteky*, 510 U.S. at 555.

First, recusal is not appropriate on the basis of the litigation that plaintiff claims to be bringing in state court against a number of judges in this district, including the undersigned. The undersigned has consulted the Judicial Conference's Guide to Judiciary Policy and finds that in fact, the Committee on Codes of Conduct has advised against recusal in such a situation:

Important reasons exist for a judge not to disqualify routinely, as this would permit and might even encourage litigants to manipulate and abuse the judicial process, which could undermine public confidence in the integrity of the judiciary. Automatic disqualification of a judge cannot be obtained by the simple act of suing the judge, particularly where the suit is primarily based on the judge's prior judicial rulings.

....
A litigant with a case pending before a judge may respond to an adverse ruling by initiating a complaint against the judge....

A judge is not automatically disqualified from participating in other, unrelated cases involving the same litigant, whether they are filed before or after the complaint in which the judge is a defendant. Judicial immunity usually will be a complete defense against a new complaint of this nature, and the court in which the complaint is filed likely will dismiss it as frivolous. In such circumstances, the mere fact that a litigant has filed a new frivolous complaint against a judge based on the judge's official actions will not disqualify the judge from continuing to preside over the earlier, unrelated matter brought by the same litigant. The same holds true when a litigant who previously filed a complaint naming a judge subsequently files an unrelated case against others that is assigned to the named judge.

Although there might be some question regarding the impartiality of the judge in these situations, [Judicial] Canon 3C(1) requires that the basis for questioning a judge's impartiality must be "reasonable" for the judge to be required to recuse. The factors the judge should consider in making the reasonableness determination are identified above, i.e., the nature of the complaint, the applicable law, and other relevant circumstances. A complaint filed against a judge that is subject to prompt

dismissal on judicial immunity grounds will not ordinarily give rise to a reasonable basis to question the judge's impartiality in unrelated cases filed against others by the same litigant. Such a nonmeritorious complaint, standing alone, will not lead reasonable minds to conclude that the judge is biased against the litigant or that the judge's impartiality can reasonably be questioned, and thus will not require the judge to recuse.

¹“Committee on Codes of Conduct Advisory Opinion No. 103: Disqualification Based on Harassing Claims Against Judge,” *Guide to Judiciary Policy*, Vol. 2B, Ch. 2, at 187–89.

In light of what appears to be an attempt by plaintiff to have the undersigned disqualified from hearing plaintiff's cases in this Court by filing state court litigation claiming obstruction of justice, the undersigned concludes that the nature of the state court proceeding and all relevant circumstances counsel against recusal.

Plaintiff also seeks recusal based on the undersigned's report and recommendation in one of plaintiff's previously filed cases in this Court. *See* Dkt. 42, *Smith v. Haynes*, 3:19-cv-0394-RBL. However, the undersigned is aware of no requirement that a judge must recuse himself from handling multiple cases filed by the same litigant or where a litigant is dissatisfied with an adverse ruling in another matter. Plaintiff points to no indication of extrajudicial bias when the undersigned entered the report and recommendation in *Smith v. Haynes*. A reasonable observer would not conclude that such calls into question this Court's ability to be impartial in the pending matter.

For these reasons, the undersigned declines to voluntarily recuse himself in this matter.

CONCLUSION

The undersigned will not voluntarily recuse himself from this matter. Plaintiff's motion (Dkt. 74) shall be referred to the Chief Judge in accordance with LCR 3(f) for a determination as

¹ Available at <https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies>.

1 to its merits. This action is stayed pending resolution of the recusal issue. No further motions
2 shall be filed in this matter until the stay is lifted. **Any motion filed while the matter is stayed**
3 **shall not be considered and shall be dismissed.** The Clerk is direct to send a copy of this order
4 to petitioner.

5 Dated this 20th day of May, 2020.

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9 J. Richard Creatura
United States Magistrate Judge
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